No. 08-1154

In The
Supreme Court of the United States

BRENT D. JOHNSON,
Petitioner,

v.

CLARENDON NATIONAL INSURANCE COMPANY, et al.,
Respondents.

On Petition for Writ of Certiorari to the Court of Appeals of Georgia

OBJECTION OF RESPONDENTS TO MOTION OF AMICUS CURIAE FOR LEAVE TO FILE BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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Simply parroting the tangential arguments of Petitioner, the brief sought to be filed by Movant as *amicus curiae* brings no relevant matter to the attention of the Court. Movant demonstrates an understandable lack of familiarity with the issues, the underlying case and applicable law. Respondents have withheld consent to the filing of the brief because the same *amicus* motion was rejected when it was first attempted in the state discretionary court, and because Movant fails to bring any relevant matter to the attention of the Court not already addressed by the parties. Moreover, the proposed brief demonstrates confusion as respects the issues presented and the express provisions of the Federal Motor Carrier Safety Regulations (FMCSR).

Under the facts of this case as demonstrated in Respondents' Brief in Opposition, the position of Petitioner as repeated by Movant that liability for an accident involving a truck can be blindly imposed "pin the tail on the donkey" style on one in no way related to the incident or underlying transaction is preposterous and absurd on its face. The motor carrier that Petitioner chose to sue had no involvement in the underlying incident or with any person involved in it. As the Court of Appeals of Georgia correctly held, there is no evidence to the contrary and none supporting the liability theory of Petitioner. None was presented at trial and none has been identified since trial. Both the brief of Movant and the tardy Reply Brief of Petitioner, urge a knee-jerk liability position unaided by support from the

record or any reasonable implications that could be drawn from the record or the opinion of any court of any jurisdiction. Quite understandably, none have been cited to this Court. The FMCSR which both Petitioner and Movant find so befuddling simply do not support their position. This explains the circuity of Petitioner's arguments as merely repeated by Movant that the express language of the very statute they purport to apply should be disregarded.

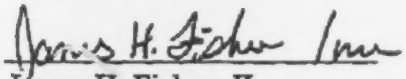
The issues here do not involve or relate to the history or development of the FMCSR, the MCS 90 endorsement, or insurance law. The issues in this case have not been contrarily decided by any court nor does the ruling below contravene or put into question any established precedent. Quite the contrary is true. It is the express language of the applicable regulations upon which Respondents rely and which the Court of Appeals of Georgia correctly applied. The issues in this case do not involve a motor common carrier, the regulatory subject of the FMCSR, other than as relates to the fact that the motor common carrier Petitioner chose to sue was not in any way involved with the facts giving rise to the underlying action. This exposes the fallacy of the arguments presented by Petitioner and regurgitated by Movant. They offer the FMCSR as support for their incongruous position that the express language of the FMCSR should be disregarded to impose liability upon Respondents.

Contrary to the assertions of Movant and Petitioner, this case does not impact the policy framework established by Congress or the application of the FMCSR with respect to financial responsibility, lease arrangements, insurance of

motor common carriers or any other matter. The regulations are as intact and applicable today as ever. Under the facts of this case, the regulations do not create liability where none was ever intended. The regulations do not create liability against an entity that had absolutely no involvement in the incident which was the subject of the underlying action or relationship with anyone involved. It was not by scurrilous scheme but in irrefutable fact that the evidence established that Respondents were not involved in the incident or the transaction giving rise to the underlying action. The outcome of this case is singularly fact sensitive and limited to the evidence presented.

Respondents object to the Motion For Leave and urge that the motion be denied.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Megan L. Krugler, hereby certify that an original and 10 copies of the foregoing Objection Of Respondents To Motion Of Amicus Curiae For Leave To File Brief In Support Of Petition For Writ Of Certiorari in 08-1154, *Brent D. Johnson v. Clarendon National Insurance Company, et al.*, were sent via Overnight to the U.S. Supreme Court, and 1 copy to the following parties below, this 21st day of April, 2009:

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All parties required to be served have been served.

I further declare under penalty of perjury that the foregoing is true and correct. This Certificate is executed on April 21st, 2009.

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Sworn to and subscribed before me by said Affiant on the date designated below.

Date: 4-21-09

Notary Public

[Seal]

NOTARY PUBLIC STATE OF OHIO

PHILIP TUCKER
Notary Public, State of Ohio
My Commission Expires
January 1, 2012